

Application No.: 10/085,885

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Docket No.: 373722002400

REMARKS

Applicant provisionally elects the claims of Group II but respectfully traverses the present restriction requirement. Applicant notes that the claims of all groups are currently classified as being in the same class and subclass. Applicant submits that, although the effort required to search and examine is admittedly greater when examining all claims together in the present application, the effort does not rise to a level of being an undue burden to examine all claims simultaneously. The claims have certain features in common as has been identified in the present Office Action, and these common features help to ease the burden in searching and examining the groups of claims.

In addition, although as pointed out in the Office Action the subject matter of claims of Group I (at least one fluid) can be used as an optical attenuator, the subject matter of claims of Group II (at least two fluids) can be used as an optical shutter, and the subject matter of claims of Group III (at least three fluids) can be used as an optical switch, the present specification notes in the first two sentences of ¶ 175 that the subject matter discussed prior to ¶ 175 can be configured in the form of a switch, shutter, or attenuator. The subject matter discussed prior to ¶ 175 includes discussion of systems having at least one fluid, at least two fluids, and at least three fluids. Consequently, while it is possible that the subject matter of each of the groups may be configured for separate utilities depending on the ultimate final configuration adopted, the subject matter of each of Groups I, II, and III may also be utilized for the same utilities. That is, subject matter according to the claims of Groups II and III may be used as an optical attenuator, subject matter according to the claims of Groups I and III may be used as an optical shutter, and subject matter according to the claims of Groups I and III may be used as an optical switch. Applicant consequently submits that the Office Action has not established that the claimed subject matter has a "separate utility" within the meaning of MPEP 806.05 (d).

In view of the foregoing, Applicant respectfully requests that all claims of the present application be examined together in this application.

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In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 373722002400. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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